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No. 04-

IN THE

Supreme Court of the United States

STATE OF SOUTH CAROLINA; GRADY L. PATTERSON, JR., in his official capacity as Treasurer of the State of South Carolina; JIM HODGES, Governor of South Carolina; CHARLES M. CONDON, Attorney General; and ROBERT M. STEWART, individually,

Petitioners,

v.

HOLLIDAY AMUSEMENT COMPANY OF CHARLESTON, INCORPORATED and WARREN P. HOLLIDAY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

When the South Carolina General Assembly outlawed video gambling machines in 1999, the video gaming industry immediately commenced legal actions in state court challenging the constitutionality of Act No. 125. The South Carolina Supreme Court upheld the ban on video gambling machines Act in both actions. *Joytime Distributors and Amusement Co. v. State*, 528 S.E.2d 647 (S.C. 1999), *cert. denied*, 529 U.S. 1087 (2000); *Westside Quik Shop, Inc. v. Stewart*, 534 S.E.2d 270 (S.C. 2000), *cert. denied*, 531 U.S. 1029 (2000) (holding that Act 125 does not constitute a taking under the Fifth Amendment to the U.S. Constitution or the S.C. Constitution).

After this Court refused to review the South Carolina Supreme Court's rulings in *Joytime* and *Westside,* the Respondents, an owner and operator of video gambling machines, commenced this action in the federal district court asserting a takings claim and asking the district court to review and reject the judgment of the South Carolina courts on identical issues.

The question presented for review is:

Whether the *Rooker-Feldman* Doctrine applies to this action brought by a Respondent who was not a named party in the *Westside Quik Shop* state-court action, but who was a member of a trade association that participated in the state court action and who is represented by the same attorneys that litigated the previous state court action?

LIST OF PARTIES

The Petitioners are the State of South Carolina, and various state officials, including the Governor, the Attorney General, the Treasurer, and the Chief of the South Carolina Law Enforcement Division.

The Respondents are Holliday Amusement Company, Inc., and Warren P. Holliday.

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The State of South Carolina respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is officially reported at 401 F.3d 534, and it also is set forth in the Appendix [1a-11a]. The order of the District Court is unreported and it is set forth in the Appendix [12a, 14a].

STATEMENT OF JURISDICTION

The opinion of the Court of Appeals was entered on March 8, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

FEDERAL STATUTORY PROVISION INVOLVED

Section 1257 of Title 28 of the United States Code provides for federal court review of state court decisions only by the Supreme Court:

> (1) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the

Constitution or treaties or statutes of, or any commission held or authority exercised under, the United States.

STATEMENT OF THE CASE

I. Introduction – The State of South Carolina Outlaws Video Gambling Machines

It has been said that video poker was one of the most hotly contested issue in South Carolina in recent years.[1] A 1986 legislative amendment and interpretative court rulings allowed the exponential growth of the video poker industry. As of March 1999, there were nearly 34,000 reported video poker machines in the state, and over $2.5 billion was deposited into these machines in 1998.

The State of South Carolina had created an interdependent state network to provide comprehensive regulation of video poker through legislative, administrative, and judicial mechanisms. However, the growth of the video poker industry spawned intense debates and court battles. Ultimately, the State outlawed video poker machines.

On July 1, 1999, the General Assembly of the State of South Carolina exercised its police power and banned gambling on video gaming machines. 1999 Act No. 125. The Act was signed by the Governor of the State of South Carolina on July 2, 1999, and became effective, July 1, 2000. The Act, codified at S.C. Code Ann. § 12-21-2710 and 12-21-2712, make video gambling machines illegal contraband and subject to seizure.

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[1] *Johnson v. Collins Entertainment Co.*, 199 F.3d 710, 715 (4th Cir. 1999).

Act 125 is composed of several parts. Part I prohibits cash payouts on video gaming devices effective July 1, 2000. Part II provided for a public referendum to be held "to ascertain whether or not video game machine payouts will continue to be allowed in this State." Act 125, Part II, § 9(1), 1999 S.C. Acts. The specific question voters were to be asked to consider was: "Shall cash payouts for credits earned on video game machines continue to be allowed after June 30, 2000?" Act 125, Part II, § 9(2), 1999 S.C.Acts.

II. Challenges to Constitutionality of Act 125 in State Court

The Act was immediately subjected to two significant constitutional challenges in the form of lawsuits brought by owners and operators of the affected video gambling machines. *Joytime Distributors and Amusement Co. v. State*, 528 S.E.2d 647 (S.C. 1999), *cert. denied*, 529 U.S. 1087 (2000); *Westside Quik Shop, Inc. v. Stewart*, 534 S.E.2d 270 (S.C. 2000), *cert. denied*, 531 U.S. 1029 (2000).

In *Joytime Distributors,* the South Carolina Supreme Court held that the legislature unconstitutionally delegated its power to enact laws by enacting Part II of Act 125. S.C. Const. Art. III, § 1. However, the State Court also ruled that Part I of Act 125, as a free standing enactment of the General Assembly, is severable from the unconstitutional portions of the Act, and is upheld. The *Joytime* plaintiff petitioned this Court for a writ of certiorari, which was denied.

The highly-publicized case of *Westside Quik Shop, Inc.* was originally filed in state Circuit Court, but the state governmental defendants petitioned the South Carolina

Supreme Court to remove the case to its original jurisdiction based on the importance of the case and its significant public policy implications. The South Carolina Supreme Court granted the defendants' petition to hear the case in its original jurisdiction and held that Act 125 does not constitute a taking under the Fifth Amendment to the U.S. Constitution, the S.C. Constitution, or under 42 U.S.C. § 1983. In its *Westside* decision, the South Carolina Supreme Court held that video gambling machine owners and operators are not entitled to compensation under either the U.S. Constitution or the South Carolina Constitution, because their machines were lawfully subject to forfeiture as contraband under South Carolina law, which "comports with due process even when applied to machines that were previously legally possessed." 534 S.E.2d at 273. The South Carolina Supreme Court further held that the forfeiture of video gambling machines substantially advances the legitimate government interests of prohibiting illicit gambling and that the highly regulated nature of the video gambling industry renders the machines' owners' investment-backed expectations unreasonable so that no taking is found. *Id.* at 275. The *Westside* plaintiffs also filed a petition for writ of certiorari which this Court denied. 531 U.S. 1029.

Holliday was not a party in the *Westside Quik Shop, Inc.* litigation, but it was a member of the South Carolina Coin Operators Association which filed an amicus brief in the South Carolina court. Holliday is also represented by two of the same attorneys who represented the *Westside* plaintiffs.

III. The Plaintiff's Attempt to Overrule and Reverse the State Court's Decisions in the Federal District Court

Holliday Amusement Company owned and operated video gambling machine that became illegal on January 1, 2000, when Act 125 became effective. After the South Carolina Supreme Court rendered its decisions in *Joytime Distributors* and *Westside Quik-Shop,* and after this Court refused to hear the gambling industry's petition for review, Holliday Amusement and its sole shareholder, Warren P. Holliday, (together, "Holliday"), instituted this action in federal district court, raising the very same constitutional challenges raised in the *Westside* case, and seeking a declaration of inverse condemnation and compensation under the Fifth and Fourteenth Amendments to the U.S. Constitution.

Appellants filed this lawsuit in the U.S. District Court at Charleston, South Carolina on January 2, 2001, alleging that South Carolina's enactment and enforcement of Act No. 125, destroyed Holliday's business, resulting in an unconstitutional taking of his property in violation of the Constitution and 42 U.S.C. § 1983. Holliday sought declaratory and injunctive relief, or, in the alternative, damages arising out the unconstitutional taking.

On March 1, 2001, the State filed a motion to dismiss for lack of jurisdiction pursuant to the *Rooker-Feldman* Doctrine. *District of Columbia Ct. App. v. Feldman,* 460 U.S. 462 (1983); *Rooker v. Fid. Trust Co.,* 263 U.S. 413 (1923).

On December 20, 2001, the District Court below entered a minute order granting the State's motion to dismiss. [App. 12a-13a.] The District Court explained its reasoning from the bench:

> THE COURT: All right. It seems to me that the issues we have before us are very simple. It seems to me very obvious that the *Rooker-Feldman* doctrine applies.
>
> Under *Rooker-Feldman*, as stated by the Fourth Circuit, in *Allstate Insurance Company v. West Virginia State Bar*, 233 F.3d. 813, . . . federal courts are generally barred from not only considering issues actually presented to and decided by state court, but also hearing constitutional claims that are inextricably intertwined with questions ruled upon by state court, as when success on the federal claim depends upon a determination that the state court wrongly decided the issues before it.
>
> And that's precisely what we've got here. We may have some minor issues in this case that are different from what exists in the *West Side Quik Shop, Inc.* case, which of course is reported at [534 S.E.2d 270]. But the underlying points that are raised in that case are *identical to the issues that will be presented in the instant case.*
>
> And the only way that plaintiff could recover in this case is for the Court to conclude that the major issues decided in *West Side Quik Shop, Inc.* were wrong. And I believe that under the circumstances

> in this case, that case is controlling. That case calls into play the *Rooker-Feldman* doctrine and causes this court to lack . . . subject matter jurisdiction.

[App. 14a-15a (emphasis added).]

Following the ruling of the District Court below on the State's motion to dismiss, the Plaintiffs appealed to the Court of Appeals for the Fourth Circuit pursuant to 28 U.S.C. § 1291. The Court of Appeals held that the *Rooker-Feldman* abstention doctrine does not bar Holliday's federal court action because it was not a named party to the earlier state-court challenge to Act No. 125 in *Westside Quik-Shop,* citing *Johnson v. De Grandy,* 512 U.S. 997 (1994). 401 F.3d 534; [App. 1a-11a.]

REASONS FOR GRANTING THE PETITION

The present federal court action raises claims identical to those raised before the South Carolina Supreme Court by video gambling machine owners and lessees in the *Westside* case. The *Westside* plaintiffs challenged Act 125 as an unconstitutional taking of property for public use without just compensation under the Fifth and Fourteenth Amendments to the U.S. Constitution, and also under 42 U.S.C. § 1983. *Id.* In its *Westside* decision, the South Carolina Supreme Court addressed and rejected all of those constitutional challenges.

This case concerns an important question of the scope of federal court jurisdiction to review a decision of a state's highest court. Only this Court has been granted the power and jurisdiction to review a decision by a state court. 28 U.S.C. § 1257. Neither the district courts nor the circuit

courts of appeals have jurisdiction over "cases brought by state-court losers complaining of injuries caused by state-court judgment rendered before the district court proceeding commenced and inviting district court review and rejection of those judgments." *Exxon v. Saudi Basic Indus. Corp.*, __ U.S. __, 124 S. Ct. 1517, 1522 (2005).

The State of South Carolina maintains that the District Court correctly held that it has no jurisdiction in this action brought by Holliday seeking to overturn the South Carolina Supreme Court's decision in *Westside Quik Shop*. The State respectfully submits that the Court of Appeals' ruling on the application of the *Rooker-Feldman* Doctrine is not compelled by this Court's decision in *Johnson v. De Grandy,* and it does not comport with this Court's most recent decision in *Exxon v. Saudi Basic Indus. Corp.*, *supra*. In addition, the Court of Appeals' ruling on this issue is in conflict with the decisions in other circuits.

Accordingly, there are serious, compelling reasons for this Court to grant the petition to clarify its precedent and resolve the conflict between the circuits regarding the scope of federal court jurisdiction to review decisions of state courts.

I. The *Rooker-Feldman* Doctrine – The Limits of Federal Court Review of State Court Judgments

The fundamental premise of the *Rooker-Feldman* Doctrine is that the only means by which a party may seek federal review of a state court judgment is by petitioning the Supreme Court for certiorari pursuant to 28 U.S.C. § 1257(a). The federal district court, and the circuit court of appeals, have no jurisdiction to consider issues decided by a state

court or Constitutional claims that are "inextricably intertwined" with questions ruled upon by a state court." *Feldman,* 460 U.S. at 482, n.16; *Player v. Moore,* 129 F.3d 728, 731 (4th Cir. 1997). A federal claim is considered to be "inextricably intertwined" with a state court judgment when "the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Pennzoil Co. v. Texaco, Inc.,* 481 U.S. 1, 25, (1987) (Marshall, J., concurring); *Allstate Ins. Co. v. W. Va. State Bar,* 233 F.3d 813, 819 (4th Cir. 2000); *Silverman v. Silverman,* 338 F.3d 886, 893 (8th Cir. 2003) (en banc) ("Where the district court must hold that the state court was wrong in order to find in favor of the plaintiff, the issues . . . are inextricably intertwined.").

The doctrine takes it name from this Court's decisions in *Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983). In *Rooker*, the parties defeated in a state court action sought relief in a federal district court, alleging that the adverse state-court judgment was rendered in contravention of the Constitution and asking the federal court to declare it "null and void." The Court held that federal district courts lacked the appellate authority, because Congress had empowered only the Supreme Court with jurisdiction to exercise appellate authority "to reverse or modify" a state-court judgment. 263 U.S. at 416.

The Court revisited the issue of federal appellate jurisdiction sixty years later in *District of Columbia Court of Appeals v. Feldman,* when two plaintiffs petitioned the District of Columbia Court of Appeals to waive a court Rule that required D.C. bar applicants to have graduated from a law school approved by the American Bar Association. After

the D.C. court denied their waiver requests, Hickey and Feldman filed suits in the United States District Court for the District of Columbia. Citing *Rooker,* this Court observed that the District Court lacked authority to review a final judicial determination of the D.C. high court and that only the Supreme Court could review such determinations. 460 U.S. at 476.

Most recently, the Supreme Court issued a unanimous opinion in *Exxon v. Sauid Basic Indus. Corp.*, __ U.S. __, 124 S. Ct. 1517 (2005), to resolve conflict among the Courts of Appeals over the scope of the *Rooker-Feldman* Doctrine. The Court reversed the Third Circuit's decision which applied *Rooker-Feldman* to dismiss a parallel declaratory judgment action that was brought in federal court while a state court action was pending. ExxonMobil was not asking the district court to undo the state court judgment *in its favor;* rather, even after winning a $416 million jury verdict in the state court action, Exxon had continued to pursue the federal declaratory judgment action as "insurance" in case it lost the state court appeal. The Supreme Court held that *Rooker-Feldman* only applies to "cases brought by state-court losers complaining of injuries caused by state-court judgment rendered before the district court proceeding commenced and inviting district court review and rejection of those judgments." 125 Sup. Ct. at 1522

In this case, Holliday is complaining of injuries caused by the South Carolina Supreme Court's decision in *Westside Quik Shop,* which was rendered before the district court proceeding was commenced, and invites district court review and rejection of that decision. Under the circumstances and given the procedural posture of this case, the District Court

correctly held that it lacked jurisdiction to overturn the *Westside Quik Shop* decision and properly dismissed the action.

II. Holliday seeks to overturn the South Carolina Supreme Court's decision in *Westside Quik Shop* in this federal court action.

The essential question in the case at bar, whether video gambling machine owners like Holliday are entitled to compensation for their video gambling machines having become illegal and contraband *per se* subsequent to the enactment of Act 125, has been specifically addressed and ruled upon by the South Carolina Supreme Court in *Westside*. The State Court unequivocally stated the *Westside* plaintiffs were "entitled to no compensation because their machines are lawfully subject to forfeiture as contraband" and that "the forfeiture of plaintiffs' video gaming machines, or their leasehold interest in these machines, is not a compensable taking under either our Federal or State Constitutions." 534 S.E.2d at 272, 273-74.

Holliday has expressly alleged that it has been deprived of its property without just compensation by virtue of the South Carolina Supreme Court's decision in *Westside Quik Shop*. [Complaint ¶22, 36.] Nonetheless, Holliday argued that the *Rooker-Feldman* doctrine is inapplicable because this case is not an appeal of the decision in *Westside Quik Shop, Inc. v. Stewart*. It is indisputable, however, that the District Court below could grant relief to Holliday *only* if it effectively "reverses" the *Westside* decision that the South Carolina Supreme Court has rendered.

Holliday acknowledged at the motions hearing before the District Court that the issues involved (other than possibly damages) are identical to those in the *Westside* litigation. [12/20/01 Tr. 6, lines 2-6.] And, the District Court aptly recognized that the only way that Holliday can recover in this case is for the federal District Court to overturn the South Carolina Supreme Court's decision, which it has no jurisdiction to do.

III. Holliday is a "state-court loser" to whom the *Rooker-Feldman* Doctrine should be applied.

Notwithstanding that the issues presented by Holliday are not just "inextricably intertwined", but in fact, identical with those ruled upon by the South Carolina Supreme Court in *Westside Quik Shop,* the Court of Appeals refused to apply the *Rooker-Feldman* doctrine because Holliday was not a named party in the *Westside Quik Shop* litigation. In so holding, the Court of Appeals relies upon this Court's decision in *Johnson v. De Grandy,* 512 U.S. 997 (1994).

In *Johnson,* the Supreme Court held that *Rooker-Feldman* bars a losing party in state court "from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights," but the doctrine has no application to a federal suit brought by a nonparty to the state suit. There, separate groups of Hispanic and black voters challenged Florida's reapportionment plan as a violation of § 2 of the federal Voting Rights Act of 1965. In a mandatory review action brought by the Florida Attorney General, the Supreme Court of Florida, upheld the plan as valid under federal and state law. The Florida court, however, also expressly

acknowledged that time restraints prevented a full review and authorized any "protestor" to bring a Voting Rights Act challenge in state court. However, the plaintiff/voters opted to bring a Section 2 claim in federal district court which was consolidated with a similar Section 2 action brought by the United States. On appeal from the district court's judgment for the plaintiffs, the State argued that the claims of the United States should have been dismissed under the *Rooker-Feldman* rule because they had already been litigated before the Supreme Court of Florida. However, the Supreme Court rejected that argument, explaining that the *Rooker-Feldman* Doctrine did not apply because the United States was not a party in the state court.

In relying upon *Johnson*, the Court of Appeals has misapprehended or overlooked the nature and posture of the *Westside* litigation. *Westside* was widely regarded by all observers as an "industry" lawsuit, a fact to which the record (J.A. at 756, 758, and 762), and the numerous *amicus* briefs filed in the U.S. Supreme Court in support of the *Westside* petition for writ of certiorari, abundantly attest. Westside Quik Shop, Inc. and the other named plaintiffs in the *Westside* case were but nominal plaintiffs, and Holliday could have served in that capacity equally as well, as his claims are indistinguishable from those of the named *Westside* plaintiffs.

Moreover, Holliday participated in *Westside* as *amicus curiae* through membership in the S.C. Coin Operators Association. *See Johnson v. Collins Entertainment Co.*, C/A No. 3:97-2136-17 (D.S.C.), Holliday's Amusement Company of Charleston's Supplemental Answers to First Set of Interrogatories and Request for Production of Documents, p. 5, para. 40, Oct. 23, 1998 (stating that "Defendant is a member of the South Carolina Coin Operators Association."). [J.A. 765, 770.]

Another fact of "singular significance" is that Holliday is represented by two of the same attorneys that represented the in this case have the same attorney that represented the Plaintiffs in the *Westside Quik Shop* action. *Ruiz v. Commissioner of Dep't of Transp. of the City of New York,* 858 F.2d 898, 903 (2d Cir. 1988).

To the extent a federal district court's ruling would overrule or reverse the decision of a state high court, *Rooker-Feldman* is implicated irrespective of the identity of the parties. The *Rooker-Feldman* Doctrine evolved to maintain the hierarchy of review established by Congress through 28 U.S.C. § 1257, and prevent the lower federal courts from reviewing state court judgments. This is an important and essential purpose that simply does not depend on the strict identity of the parties as recognized by various federal courts.

In *Republic of Paraguay v. Allen*, 949 F. Supp. 1269, 1273 (E.D. Va. 1996), *aff'd on other grounds*, 134 F.3d 622, 628 (4th Cir. 1997), the plaintiffs asked the federal district court through a § 1983 action to vacate a Paraguayan citizen's state court criminal conviction, arguing that the conviction violated plaintiffs' rights under various international treaties. Although the Paraguayan citizen was not a party to the federal suit, and plaintiffs argued that their federal case did not represent an appeal of the state court decision, the district court nonetheless found that the state court judgment was "inextricably intertwined" with the federal claims and was barred by *Rooker–Feldman*: "Simply stated, this Court has no authority to disturb a state court ruling regardless of the procedural posture of the litigants." *Id.* at 1273.

See also Guess v. Bd. of Medical Examiners, 967 F.2d 998, 1005 (4thCir. 1992) (federal action brought by patients

of doctor whose license had been revoked in state court proceeding was barred by *Rooker-Feldman* because patients were "litigating agents" of doctor, so that patients were effectively seeking to relitigate in federal court the claims of doctor that were previously decided in the state court.); *T.W. & M.W. v. Brophy*, 124 F.3d 893, 898 (7th Cir. 1997) (even though plaintiff was not a party to the state court proceedings, *Rooker-Feldman* doctrine barred federal suit by child abuse prevention advocate seeking damages for alleged Constitutional violations when the federal suit was effectively trying to challenge state court decisions awarding custody of children.); *Williams v. Adkinson*, 792 F.Supp. 755, 765-66 (M.D. Ala. 1992), *aff'd*, 987 F.2d 774 (11th Cir. 1993) (court applied *Rooker-Feldman* even though the federal plaintiff was not technically a party in the underlying state case because his position was adequately presented by other parties on this appeal).

"Federal court jurisdiction is not determined by whether the parties are identical, but by whether the claims are sufficiently separate from those of the state court action." *Gisslen v. City of Crystal*, 345 F.3d 624, 629 (8th Cir. 2003); *Lemonds v. St. Louis County,* 222 F.3d 488, 493 (8th Cir. 2000). If the federal claims "so closely implicate the decision of the state court," the federal suit is barred even if the plaintiff is not directly asking the district court to overturn the state court judgment. *Id.*

Ultimately, however, *Rooker-Feldman* analysis is not, and cannot be, reduced to a mere rote inquiry into the identity of the parties to a state court action. A proper *Rooker-Feldman* analysis must include some inquiry into the practical and legal implications that a federal district court's ruling may have on the related state court judgment.

Authority for reviewing the judgments of state high courts is vested solely with the Supreme Court. If a federal district court's ruling will undermine or reverse the decision of a state high court, *Rooker-Feldman* is implicated, irrespective of the identity of the parties. The fact that Holliday was not a named plaintiff in the *Westside* suit does not preclude the application of *Rooker-Feldman*. As one commentator has stated:

> [D]espite some circuits' apparent refusal to apply *Rooker - Feldman* to any plaintiff not a party to the state proceeding, the better rule is that the nature of the federal suit and not the party seeking it should determine whether *Rooker - Feldman* bars the suit. A doctrine that is designed to protect state court judgments from federal review should not care about the identity of parties. A court that strays from this common sense conclusion will end up hopelessly confused – and will often find some other reason to avoid jurisdiction.

Suzanna Sherry, *Judicial Federalism in the Trenches: the Rooker-Feldman Doctrine in Action*, 74 Notre Dame L. Rev. 1085 (1999).

Were the District Court below to entertain Holliday's lawsuit, and overrule the decisions reached by the South Carolina Supreme Court in *Westside*, the State, and the federal district courts in South Carolina, would be subjected to the onerous burden of relitigating issues of paramount importance to the public that have already been resolved by the State's High Court with finality in the *Westside* case.

As noted above, there were 34,000 video poker machines in the State of South Carolina that became illegal contraband when Act No. 125 been effective, which under the Fourth Circuit's ruling, could conceptually create literally thousands of takings cases flooding the federal courts. Such a result would be profoundly problematic, and illustrates exactly why the *Rooker-Feldman* Doctrine has evolved and why it deprives the District Court of subject matter jurisdiction here. Indeed, *Rooker-Feldman* is designed to prevent just this kind of "end-run" around state court judgments, and to prevent the onerous relitigation in federal court of issues finally and definitively ruled upon in state court. The video poker industry in South Carolina was so intertwined as a result of the plethora of video poker machines throughout the State that any argument that a ban on those machines constituted an unconstitutional taking has now been fully and finally litigated for that entire industry, including Holliday.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DECIDED MARCH 8, 2005

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 02-1122

HOLLIDAY AMUSEMENT COMPANY OF CHARLESTON, INCORPORATED; WARREN P. HOLLIDAY,

Plaintiffs-Appellants,

v.

STATE OF SOUTH CAROLINA; GRADY L. PATTERSON, JR., in his official capacity as Treasurer of the State of South Carolina; JIM HODGES, Governor of South Carolina; CHARLES M. CONDON, Attorney General; ROBERT M. STEWART, individually,

Defendants-Appellees.

Appeal from the United States District Court
for the District of South Carolina, at Charleston.
C. Weston Houck, District Judge.
(CA-01-210-2-12)

Argued: October 29, 2002

Decided: March 8, 2005

Before WIDENER, WILKINSON, and KING, Circuit Judges.

Appendix A

Vacated and remanded with instructions by published opinion. Judge WIDENER wrote the opinion, in which Judge WILKINSON and Judge KING concurred.

OPINION

WIDENER, Circuit Judge:

The plaintiffs are Warren P. Holliday and Holliday Amusement Co., Inc., of which Warren Holliday is the sole owner and operator (Holliday). On January 19, 2001, Holliday filed a complaint in the United States District Court for the District of South Carolina, Charleston Division alleging that South Carolina's enactment and enforcement of 1999 S.C. Act No. 125, now codified as S.C.Code Ann. § 12-21-2710 (2000) (the Act), destroyed Holliday's business, resulting in an unconstitutional taking of his property in violation of the Constitution and 42 U.S.C. § 1983. Holliday sought declaratory and injunctive relief, or, in the alternative, damages arising out the unconstitutional taking. On December 21, 2001, the district court dismissed the action based on its finding that the court lacked subject matter jurisdiction because the major issues of the case had previously been litigated in *Westside Quik Shop, Inc. v. Stewart,* 534 S.E.2d 270 (2000), *cert. denied,* 531 U.S. 1029 (2000), thereby divesting the district court of jurisdiction under the *Rooker-Feldman* doctrine.

Because we believe that *Johnson v. De Grandy,* 512 U.S. 997 (1994), decided that the *Rooker-Feldman* doctrine does not apply when the party asserting the claim in federal court

was not a party to the state proceedings, and because the subsequent Supreme Court and Fourth Circuit cases citing *Johnson* have continued to uphold this standard, we vacate the district court's decision.

I.

Since 1976, Warren Holliday has owned and operated Holliday Amusement Co., Inc. in South Carolina, in which he sold video gaming machines throughout the State. On July 1, 1999, the State of South Carolina enacted S.C. Act No. 125, which made possession of video gaming machines illegal after July 1, 2000, and subjected the machines to forfeiture and destruction by the State. S.C.Code Ann. § 12-21-2710 (2000). At the time the Act went into effect, Holliday owned 532 operational video gaming machines. Immediately following its enactment, owners and lessees of video gaming machines filed suit in a South Carolina state court challenging the constitutionality of the Act. Holliday was not a party in the *Westside Quik Shop, Inc.* litigation, but was a member of the South Carolina Coin Operators Association which filed an amicus brief in the South Carolina court.[1] See Brief of Amici Curiae S.C. Coin Operators Ass'n, Inc., *Westside Quik Shop, Inc. v. Stewart,* 531 U.S. 1029 (2000) (00-433). The plaintiffs in *Westside Quik Shop, Inc.* sought an injunction against enforcement of the Act, claiming that it effected an unconstitutional taking of their property

1. Holliday claims that he could not have been a party to the *Westside Quik Shop, Inc.* litigation because his claim would not have been ripe for state court review during the pendency of that litigation. Appellant's Brief at 5, *Holliday Amusement Co. v. South Carolina,* 00-1122.

without just compensation. *Westside Quik Shop, Inc.*, 534 S.E.2d at 271.

The South Carolina Supreme Court found that the Act did not constitute an unconstitutional taking without just compensation, and because that court did not find a Constitutional violation, it summarily disposed of the plaintiff's 42 U.S.C. § 1983 claim. *Westside Quik Shop, Inc.*, 534 S.E.2d at 275. Thus, the court refused to enjoin enforcement of the Act. The Act went into effect as of July 1, 2000, as codified under S.C.Code Ann. § 12-21-2710.

On January 19, 2001, Holliday brought this action in federal district court, claiming that enactment and enforcement of the Act destroyed his business, resulting in millions of dollars of uncompensated loss, which constituted a taking in violation of the U.S. Constitution and 42 U.S.C. § 1983. He sought declaratory and injunctive relief, or, alternatively, damages arising out of the alleged uncompensated taking.

After reviewing the record of the *Westside Quik Shop, Inc.* case, the district court granted the motion to dismiss for lack of subject matter jurisdiction because it held the *Rooker-Feldman* doctrine applied. Holliday appealed. We vacate and remand.

On appeal, Holliday raises as the following principal issue that the *Rooker-Feldman* doctrine is inapplicable because Holliday was not a party to the *Westside Quik Shop, Inc.* litigation. He argues that he could not have been because his injury did not arise until after the South Carolina Supreme

Court rendered its decision to enforce the Act, and Holliday's lawsuit is ripe for federal court review and federal court ripeness requirements do not implicate the *Rooker-Feldman* doctrine.

Expressing no opinion on the merits, we review de novo the district court's dismissal of Holliday's claims for lack of subject matter jurisdiction. See *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir.1999); *Guess v. Bd. Of Med. Exam'rs of State of N.C.*, 967 F.2d 998, 1002 (4th Cir.1992).

II.

The *Rooker-Feldman* doctrine is a jurisdictional rule providing that lower federal courts generally cannot review state court decisions; rather, jurisdiction "lies exclusively with superior state courts, and, ultimately, the United States Supreme Court." See *Allstate Ins. Co. v. W. Va. State Bar,* 233 F.3d 813, 816 (4th Cir.2000). See also *District of Columbia Ct.App. v. Feldman,* 460 U.S. 462, 482-86 (1983); *Rooker v. Fid. Trust Co.,* 263 U.S. 413, 415-16 (1923). Under this doctrine, federal district courts are barred from considering issues already presented by a party and decided by a state court and also are barred from hearing Constitutional claims that are "'inextricably intertwined with' questions [so] ruled upon by a state court." *Plyler v. Moore,* 129 F.3d 728, 731 (4th Cir.1997). A federal claim is considered to be "inextricably intertwined" with a state court judgment when "the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Allstate Ins. Co.,* 233 F.3d at 819.

Appendix A

The first argument that Holliday asserts is that *Rooker-Feldman* is inapplicable because Holliday was not a party in the *Westside Quik Shop, Inc.* litigation. The Supreme Court decided this issue in *Johnson v. De Grandy,* 512 U.S. 997 (1994) in favor of Holliday's argument, and neither any Supreme Court nor a fourth circuit decision since *Johnson* has lessened the impact of that holding.

In *Johnson,* separate groups of Hispanic and black voters claimed that Florida's reapportionment plan establishing legislative districts for the state Senate and House unlawfully diluted the voting strength of Hispanics and blacks in violation of § 2 of the federal Voting Rights Act of 1965. In a review required by the State Constitution, initiated by the Florida Attorney General, the Supreme Court of Florida, by declaratory judgment, held the plan valid under federal and state law. *In re: Constitutionality of SENATE JOINT RESOLUTION 2G, SPECIAL APPORTIONMENT SESSION,* 597 So.2d 276 (Fla.1992). The Florida court, however, also acknowledged that time restraints prevented a full review and authorized any "protestor" to bring a Voting Rights Act challenge in that court. The plaintiffs, however, chose to bring their § 2 claim in federal district court. The United States also filed a similar complaint in the district court, alleging a § 2 violation. After consolidating the actions, the district court found in favor of the plaintiffs. *Johnson,* 512 U.S. at 1001-04. On appeal, the Court rejected the State's argument that the claims of the United States should have been dismissed under the *Rooker-Feldman* rule because they had already been litigated before the Supreme Court of Florida. *Johnson,* 512 U.S. at 1005-06. Accordingly, the Court denied the State's argument that the federal

government's § 2 challenge should be dismissed under the *Rooker-Feldman* doctrine. The Court explained that "because the United States was not a party in the state court," the *Rooker-Feldman* doctrine did not apply and thus the United States' claim was not barred.

The Supreme Court in *Johnson* could hardly have stated more clearly that the *Rooker-Feldman* doctrine did not apply other than to parties in the state proceedings. And in the 14 subsequent Supreme Court cases which cite the *Johnson* decision, none dilute this requirement.[2] In the case at hand, Holliday was not a party to the *Westside Quik Shop, Inc.* state litigation.

This court also has not watered down that aspect of the *Rooker-Feldman* discussion found in *Johnson.* We have cited *Johnson* nine times, and have not disturbed the requirement of participation in the state proceeding.[3] In particular, two

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2. See *Vieth v. Jubelirer,* 541 U.S. 267 (2004); *Georgia v. Ashcroft,* 539 U.S. 461, 473, n. 1 (2003); *Reno v. Bossier Parish Sch. Bd.,* 528 U.S. 320, 368 (2000); *Lopez v. Monterey County,* 525 U.S. 266, 280 (1999); *Lawyer v. DOJ,* 521 U.S. 567, 570 (1997); *Abrams v. Johnson,* 521 U.S. 74, 92 (1997); *Reno v. Bossier Parish Sch. Bd.,* 520 U.S. 471, 480 (1997); *Bush v. Vera,* 517 U.S. 952, 979 (1996); *Shaw v. Hunt,* 517 U.S. 899, 913 (1996); *Morse v. Republican Party,* 517 U.S. 186, 232 (1996); *City of Bridgeport v. Bridgeport Coalition for Fair Representation,* 512 U.S. 1283, 1283 (1994); *Tyus v. Bosley,* 512 U.S. 1249 (1994); *McWherter v. Rural W. Tenn. African-American Affairs Council,* 512 U.S. 1248, 1248 (1994); *Holder v. Hall,* 512 U.S. 874, 908 (1994). We hasten to add that these citations refer to the merits of *Johnson,* not *Rooker-Feldman.* The fact remains that the Supreme Court has not altered its rule.

3. See *Hall v. Virginia,* 385 F.3d 421, 426 (4th Cir.2004); *Shooting Point, L.L.C. v. Cumming,* 368 F.3d 379, 383 (4th Cir.2004); (Cont'd)

cases from this court specifically state that the *Rooker-Feldman* doctrine is inapplicable in instances in which the person asserting the claim in federal court was not a party to the state proceeding. See, e.g., *Barefoot v. City of Wilmington,* 306 F.3d 113 (4th Cir.2002); *Gross v. Weingarten,* 217 F.3d 208 (4th Cir.2000).

In *Barefoot v. City of Wilmington,* this court held that the district court had jurisdiction with respect to litigants who were not parties to a state court proceeding, but held that the *Rooker-Feldman* doctrine barred suit by those who were parties because they "had a 'reasonable opportunity' to litigate the constitutional issues in state court." *Barefoot,* 306 F.3d at 121 (citations omitted). In *Barefoot,* several plaintiffs brought suit in a North Carolina court against the city of Wilmington, alleging that it had failed to comply with North Carolina's annexation statutes. After the state court decided that the City had complied, some of the same plaintiffs who were parties to the state court proceeding and a number of new plaintiffs brought suit in federal court alleging that the annexation statutes were unconstitutional. *Barefoot,* 306 F.3d at 121. We decided that the plaintiffs who had been parties

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(Cont'd)

United States v. Charleston County, 365 F.3d 341, 345 (4th Cir.2004); *Am. Reliable Ins. Co. v. Stillwell,* 336 F.3d 311, 316 (4th Cir.2003); *Vulcan Chem. Techs., Inc. v. Barker,* 297 F.3d 332, 338 (4th Cir.2002); *Gross v. Weingarten,* 217 F.3d 208, 218, n. 3 (4th Cir.2000); *Brown & Root, Inc., v. Breckenridge,* 211 F.3d 194, 198 (4th Cir.2000); *Lewis v. Alamance County,* 99 F.3d 600, 604 (4th Cir.1996); *Cane v. Worcester County,* 35 F.3d 921, 925 (4th Cir.1994). *Hall, Charleston County, Lewis* and *Cane* do not mention the *Rooker-Feldman* question, the others do.

in the state suit were barred by the *Rooker-Feldman* doctrine because they could have brought their Constitutional claims in the state court proceeding, and thus were barred from presenting this issue to the federal court. *Barefoot,* 306 F.3d at 121. Those plaintiffs who were not parties in the state court proceeding, however, were allowed to bring their suit. "Claims by individuals not party to the state court proceedings, however, are not barred." *Barefoot,* 306 F.3d at 120.

The case of *Gross v. Weingarten* arose out of a state receivership in which the plaintiff challenged in a subsequent case in the federal district court the admission of certain evidence that was contradictory to a holding in the state receivership proceeding. *Gross,* 217 F.3d at 217-18. This court found that because the defendants who were offering the evidence were not parties to the state proceeding, they were not bound by the holding of the receivership proceeding and were not barred by collateral estoppel. In so finding, the court, rejected application of *Rooker-Feldman* to bar admission of the evidence because the defendants were not a party to the state court proceeding. *Gross,* 217 F.3d at 218 n.6. Citing *Johnson,* the court stated that "*Rooker-Feldman* does not apply, however, when the person asserting the claim in the federal suit was not a party to the state proceeding." *Gross,* 217 F.3d at 218 n.6.

Both *Barefoot* and *Gross* demonstrate this court's commitment to the requirement that, absent participation in the state proceeding, a *Rooker-Feldman* objection to jurisdiction is not well taken. Moreover, three other circuits have adopted a rule, declining to apply the *Rooker-Feldman*

doctrine when a federal court suit is brought by a party who was not a party in the preceding state court action.[4]

We realize that the wording in *Feldman,* 460 U.S. at 486, that "These allegations [complained of] are inextricably intertwined with the District of Columbia Court of Appeals' decisions, in judicial proceedings, to deny the respondents' petitions," has been variously construed in many cases, as did the district court in this case: "Federal courts are generally barred from not only considering issues actually presented to and decided by [a] state court, but also hearing constitutional claims that are inextricably intertwined with questions ruled upon by a state court as when success on the federal claim depends on a determination that the state court wrongly decided the issues before it." Nevertheless, subsequent to the decision in *Johnson,* the decisions in this circuit have uniformly followed the *Johnson* rule, that a party to the proceeding in the state court may not subsequently request a federal court to examine the same question, but a non-party to the state court proceeding is not so bound. If there is a fact situation in which a federal plaintiff who was not a party to the state proceeding is nevertheless inextricably intertwined with the state decision, we express

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4. See *Bennett v. Yoshina,* 140 F.3d 1218, 1223-24 (9th Cir.1998), *cert. denied sub nom. Citizens for a Constitutional Convention v. Yoshina,* 525 U.S. 1103 (1999); *United States v. Owens,* 54 F.3d 271, 274 (6th Cir.1995); *Valenti v. Mitchell,* 962 F.2d 288, 297-98 (3d Cir.1992); *cf.* Wright & Miller, *Federal Practice & Procedure* § 4469.1 (2002). The Sixth Circuit, in *United States v. Owens,* explained this rational when it stated, "a party cannot be said to be appealing a decision by a state court when it was not a party to the case." *Owens,* 54 F.3d at 274.

no opinion as to that question, but we observe that no such situation has been presented to us, at least since the decision in *Johnson,* which we follow.

The second issue that Holliday asserts is that the *Westside Quik Shop, Inc.* litigation made Holliday's present suit ripe pursuant to the ripeness doctrine, as established under *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City,* 473 U.S. 172 (1985). Holliday makes this argument in an effort to avoid the application of the *Rooker-Feldman* doctrine. Because we have otherwise held that the *Rooker-Feldman* doctrine is inapplicable we do not reach this issue.

The judgment of the district court is vacated and the case is remanded for further proceedings not inconsistent with this opinion.

VACATED AND REMANDED WITH INSTRUCTIONS

APPENDIX B — MINUTE ORDER OF THE DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION FILED DECEMBER 21, 2001

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA,

CHARLESTON DIVISION

Civil Action No. 2:01-0210-12

HOLLIDAY AMUSEMENT COMPANY, INC., AND WARREN P. HOLLIDAY,

Plaintiff,

vs.

STATE OF SOUTH CAROLINA, GRADY L. PATTERSON, JR., in his official capacity as Treasurer of the State of South Carolina, and GOVERNOR JIM L. HODGES, ATTORNEY GENERAL CHARLES M. CONDON, ROBERT M. STEWART, individually,

Defendant.

MINUTE ORDER

This matter was before the Court upon defendants' motion to dismiss.

Appendix B

For the reasons stated from the bench at the conclusion of oral argument, the motion is granted.

IT IS SO ORDERED.

BY DIRECTION OF THE COURT

LARRY W. PROPES, Clerk

By s/ Gail S. Johnson
Gail S. Johnson
Deputy Clerk

Charleston, South Carolina
December 21, 2001

APPENDIX C — EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION DATED DECEMBER 20, 2001 (JUDGE C WESTON HOUCK'S RULING)

* * *

THE COURT: All right. It seems to me that the issues we have before us are very simple. It seems to me very obvious that the *Rooker-Feldman* doctrine applies.

Under *Rooker-Feldman*, as stated by the Fourth Circuit, in *Allstate Insurance Company vs. West Virginia State Bar*, 233 F.3d. 813, . . . federal courts are generally barred from not only considering issues actually presented to and decided by state court, but also hearing constitutional claims that are inextricably intertwined with questions ruled upon by state court, as when success on the federal claim depends upon a determination that the state court wrongly decided the issues before it.

And that's precisely what we've got here. We may have some minor issues in this case that are different from what exists in the *West Side Quik Shop, Inc.* case, which of course is reported at [534 S.E.2d 270]. But the underlying points that are raised in that case are *identical to the issues that will be presented in the instant case.*

Appendix C

And the only way that plaintiff could recover in this case is for the Court to conclude that the major issues decided in *West Side Quik Shop, Inc.* were wrong. And I believe that under the circumstances in this case, that case is controlling. That case calls into play the *Rooker-Feldman* doctrine and causes this court to lack . . . subject matter jurisdiction.

* * * *

APPENDIX D — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION FILED DECEMBER 21, 2001

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Case Number: 2:01-210-12

HOLLIDAY AMUSEMENT COMPANY, INC., and WARREN P. HOLLIDAY,

Plaintiffs,

vs.

STATE OF SOUTH CAROLINA, GRADY L. PATTERSON, JR., in his official capacity as Treasurer of the State of South Carolina, and GOVERNOR JIM L. HODGES, ATTORNEY GENERAL CHARLES M. CONDON, ROBERT M. STEWART, individually,

JUDGMENT IN A CIVIL CASE

[X] **Decision by Court**. This action came to a hearing before the Court, the Honorable C. Weston Houck presiding. The issues have been duly heard and a decision has been duly rendered.

IT IS ORDERED AND ADJUDGED that the defendants', State of South Carolina, Grady L. Patterson, Jr., in his official capacity as Treasurer of the State of South

Appendix D

Carolina, and Governor Jim L. Hodges, Attorney General Charles M. Condon, Robert M. Stewart, individually, motion to dismiss for lack of subject matter jurisdiction is granted and this action is hereby dismissed.

LARRY W. PROPES, Clerk

By s/ Gail S. Johnson
Gail S. Johnson
Deputy Clerk

December 21, 2001

(2)

No. 04-1650

Supreme Court, U.S.
FILED
JUL 8 - 2005
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

STATE OF SOUTH CAROLINA; GRADY L. PATTERSON, JR., in his official capacity as Treasurer of the State of South Carolina; JIM HODGES, Governor of South Carolina; CHARLES M. CONDON, Attorney General; and ROBERT M. STEWART, individually,

Petitioners,

v.

HOLLIDAY AMUSEMENT COMPANY OF CHARLESTON, INC. and WARREN P. HOLLIDAY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Did the court of appeals correctly analyze the *Rooker-Feldman* doctrine in this case, holding as this Court did in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. ___, 125 S. Ct. 1517 (2005), that the doctrine does not bar plaintiffs who were not parties in the state court proceeding from bringing their constitutional claims to federal court?

CORPORATE DISCLOSURE STATEMENT

Holliday Amusement Company of Charleston, Inc. has no parent corporation and no publicly held company owns 10% or more of its stock.

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STATEMENT OF THE CASE

1. From 1976 through July 1, 2000, Plaintiff Holliday Amusements Company, Inc., owned by Plaintiff Warren P. Holliday ("Holliday"), conducted a highly successful business in Charleston, South Carolina as a video gaming operator, arranging for the placement of video gaming machines in various business locations throughout the state. Compl. ¶ 9. As of July 1, 2000, Plaintiff Holliday Amusements owned 532 fully operational video gaming machines, from which it derived substantial income. *Id.* As its President and sole shareholder, Plaintiff Warren P. Holliday, derived his living from, and dedicated substantially all of his labors to, the video gaming business of Holliday Amusements. *Id.* ¶ 12.

2. Since at least 1975, the operation of such video gaming machines had been entirely lawful under the law of the State of South Carolina, subject to licensing and regulatory requirements imposed by the legislature. *Id.* ¶ 10. All 532 video gaming machines owned by Plaintiff Holiday Amusements Company were at all times duly licensed by the State of South Carolina, and operated in full compliance with all of the regulatory requirements imposed by the State. *Id.* In May 2000, Plaintiff Holliday Amusements renewed the licenses for all 532 of its machines, paying a substantial fee to the State of South Carolina of $984,000. *Id.* ¶ 11.

3. In 2001, the State of South Carolina enacted legislation establishing a State lottery or gaming program, by which the State retained all gaming proceeds. S.C. Code Ann. § 59-150-150 (Law. Co-op. 2001); S.C. Code Ann. § 59-150-190 (Law. Co-op. 2001). On July 1, 1999, the legislature of the State of South Carolina passed legislation,

known as "Act 125," outlawing the use of all private gaming equipment. Compl. ¶ 13; Act 125, 1999 S.C. Acts 1319; S.C. Code Ann. § 12-21-2710 (Law. Co-op. 2000); S.C. Code Ann. § 12-21-2712 (Law. Co-op. 1999). Under Act 125, on July 1, 2000, all privately owned video gaming machines became unlawful for the first time in the State of South Carolina, subject to confiscation and destruction, and their possession or operation became a criminal offense, subject to arrest and prosecution. Compl. ¶ 13; Act 125, 199 S.C. Acts 1319; S.C. Code Ann. § 12-21-2710 (Law. Co-op. 2000); S.C. Code Ann. § 12-21-2712 (Law. Co-op. 1999).

4. Defendants' enforcement of Act 125[1] eventually caused Holliday to lose all economically beneficial use of all

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[1] On May 25, 2000, the plaintiffs in *Westside Quik Shop, Inc. v. Stewart*, 534 S.E.2d 270 (S.C. 2000), *cert. denied*, 121 S. Ct. 606 (2000); which included none of the plaintiffs in this lawsuit, filed an action in the Common Pleas Court for Greenville County, South Carolina, Thirteenth Judicial Circuit, seeking a temporary injunction (together with permanent injunctive and declaratory relief) against the enforcement of Act 125, set to take effect on June 30, 2000. The *Westside Quik Shop* Plaintiffs sought to enjoin enforcement of Act 125 on the grounds that such enforcement would result in the taking of those plaintiffs' property rights, in violation of the Just Compensation Clauses of the Fifth Amendment and Article I,

of its video gaming machines, and resulted in a complete cessation of its video gaming business built up over the preceding 24 years. Compl. ¶ 14. As a result, the stock of Holliday Amusements, all of which is owned by Plaintiff Warren P. Holliday, was made entirely worthless. *Id.* ¶ 15.

5. On January 2, 2001, Holliday filed this lawsuit in the U.S. District Court for the District of South Carolina, Charleston Division, seeking compensation for the infringement of its constitutionally protected property rights. Holliday challenged the enforcement and application of Act 125, which destroyed Holliday's business as an

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Section 13 of the South Carolina Constitution and would also violate 42 U.S.C. § 1983. *See Westside Quik Shop, Inc. v. Stewart*, 534 S.E.2d 270 (S.C. 2000), *cert. denied*, 121 S. Ct. 606 (2000).

The *Westside Quik Shop* litigation was an as-applied challenge on behalf of four plaintiffs who sought a declaration from a state court that enforcement of Act 125 would result in the unconstitutional taking of their property. Because of its state-wide implications and importance, the South Carolina Supreme Court took the case in its original jurisdiction. The South Carolina Supreme Court rejected the *Westside Quik Shop* plaintiffs' claims, holding: "We find the forfeiture of plaintiffs' video gaming machines, or their leasehold interest in these machines, is not a compensable taking under either our Federal or State Constitutions." *Westside Quik Shop, Inc. v. Stewart*, 534 S.E.2d 270, 273-74 (S.C. 2000), *cert. denied*, 121 S. Ct. 606 (2000).

unconstitutional taking of private property and violation of 42 U.S.C. §1983. *Id.* ¶¶ 25-32. Holliday sought declaratory and injunctive relief, or in the alternative, damages arising out of the unconstitutional taking. The district court dismissed the action, holding that although Holliday was not a party in the [*Westside Quik Shop, Inc. v. Stewart*, 534 S.E.2d 270 (S.C. 2000)] litigation, the *Rooker-Feldman* doctrine divested it of jurisdiction because "federal courts are generally barred from not only considering issues actually presented to and decided by state court, but also hearing constitutional claims that are inextricably intertwined with questions ruled upon by state court, as when success on the federal claim depends upon a determination that the state court wrongly decided the issues before it." App. to Pet. for Cert. 14a.

6. The Court of Appeals for the Fourth Circuit vacated the judgment of the district court, holding that the *Rooker-Feldman* doctrine applied only "when the party asserting the

claim in federal court was not a party to the state proceedings . . . because subsequent Supreme Court and Fourth Circuit cases citing [*Johnson v. De Grandy*, 512 U.S. 997 (1994)] have continued to uphold this standard, we vacate the district court's decision." *Holliday Amusement Co. of Charleston v. South Carolina*, 401 F.3d 534, 535-36 (4th Cir. 2005); App. to Pet. for Cert. 2a-3a.

SUMMARY OF ARGUMENT

On March 30, 2005, this Court held that the *Rooker-Feldman* doctrine is confined to cases brought by "state-court losers complaining of injuries caused by state-court judgments rendered before the federal district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. ___, 125 S. Ct. 1517, 1521-22 (2005). The decision of the court of appeals for which South Carolina seeks review in this case reaches exactly the same conclusion, although the Fourth Circuit

decision was rendered before the *Exxon Mobil* decision. Here, since neither Mr. Holliday nor Holliday Amusements, Inc. were parties in the State court action, neither Mr. Holliday nor Holliday Amusements, Inc. had any right of appeal of the State case, and neither could be the losing parties in the State court case that South Carolina now says triggers application of the *Rooker-Feldman* doctrine. Thus, South Carolina's attempt to bar Holliday's lawsuit from proceeding in district court lacks merit and does not warrant this Court's review.

ARGUMENT

1. The issue on which South Carolina seeks review in this case was decided by this Court only three months ago in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. ___, 125 S. Ct. 1517 (2005). In *Exxon Mobil*, this Court held that the so-called *Rooker-Feldman* doctrine is narrowly confined, and rejected a broad application of the doctrine to plaintiffs in district court who were not parties to the prior

State court proceeding. This Court noted that it had only applied the doctrine twice, in the two original cases from which the doctrine takes its name, *Exxon Mobil*, 125 S. Ct. at 1521 (citing *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); and *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923)); and explained that

> [v]ariously interpreted in the lower courts, the doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U.S.C. § 1738. . . . Since *Feldman*, this Court has never applied *Rooker-Feldman* to dismiss an action for want of jurisdiction.

Exxon Mobil, 125 S. Ct. at 1521, 1523.

This Court in *Exxon Mobil* held that the *Rooker-Feldman* doctrine is a narrow doctrine, and does not apply, as South Carolina urges its application here, to "stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a

matter previously litigated in state court." *Exxon Mobil*, 125 S. Ct. at 1527.

Here, Holliday was not a party, nor could he have been a party to the state court litigation, because his claim – for an unconstitutional taking of private property and for violation of 42 U.S.C. §1983 – would not have been ripe for review during that litigation. Holliday was not in privity with, nor was he related in any way to, the plaintiffs in the state court litigation; thus, he lacked standing to appeal the state decision. In addition, Holliday did not ask the district court to hold that Act 125 was invalid and unenforceable. Consequently, *Rooker-Feldman* does not bar Holliday's suit. *See Exxon Mobil*, 125 S. Ct. at 1521-22 (confining *Rooker-Feldman* to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments."); *Johnson v. De Grandy*, 512 U.S. 997, 1006 (1994)

("[U]nlike Rooker or Feldman, the United States was not a party in the state court. It was in no position to ask this Court to review the state court's judgment and has not directly attacked it in this proceeding.").

2. The *Rooker-Feldman* doctrine has a legitimate but limited purpose, not applicable here. The two Supreme Court decisions from which the *Rooker-Feldman* doctrine takes its name, *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983), and *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923), involved explicit attempts to use a federal district court as a state appellate court.

In both of those cases, the losing party in state court sought to "reverse" the state court decision by winning on the same case in federal court. *See Feldman*, 460 U.S. at 482 ("[A] United States District Court has no authority to review final judgments of a state court in judicial proceedings. Review of such judgments may be had only in this Court. Therefore, to the extent that Hickey and

Feldman sought review in District Court of the District of Columbia Court of Appeals' denial of their petitions for waiver, the District Court lacked subject matter jurisdiction over their complaints."); *Rooker*, 263 U.S. at 414 ("This is a bill in equity to have a judgment of a circuit court in Indiana, which was affirmed by the Supreme Court of the state, declared null and void.").

Thus, the *Rooker-Feldman* doctrine serves to bar a lower federal court's direct review of the decision of a state's highest court, since the authority to do so is vested solely in the United States Supreme Court under 28 U.S.C. § 1257. *See, e.g., Brown & Root, Inc. v. Breckenridge*, 211 F.3d 194, 198-99 (4th Cir. 2000). The doctrine also acknowledges Congress' limited grant of power to the federal district courts, permitting those courts to exercise only original jurisdiction. *Exxon Mobil*, 125 S. Ct. at 1521 ("Federal district courts . . . are empowered to exercise original, not appellate, jurisdiction."); *Rooker*, 263 U.S. at 416 ("The

jurisdiction possessed by the District Courts is strictly original.") (citation omitted).

3. The Fourth Circuit's decision for which South Carolina seeks review is entirely consistent with this Court's unanimous decision in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. ___, 125 S. Ct. 1517 (2005). In its decision, the Fourth Circuit noted that "[t]he Supreme Court in [*Johnson v. De Grandy*, 512 U.S. 997 (1994)] could hardly have stated more clearly that the *Rooker-Feldman* doctrine did not apply other than to parties in the state proceedings. . . . In the case at hand, Holliday was not a party to the [*Westside Quik Shop, Inc. v. Stewart*, 534 S.E.2d 270 (S.C. 2000)] state litigation." *Holliday Amusement Co. of Charleston v. South Carolina*, 401 F.3d 534, 537, 538 (4th Cir. 2005); App. to Pet. for Cert. 7a.

The Fourth Circuit reaffirmed its "commitment to the requirement that, absent participation in the state proceeding, a *Rooker-Feldman* objection to jurisdiction is

not well taken." *Id.* at 539; App. to Pet. for Cert. 9a. Less than one month after the Fourth Circuit issued its decision, this Court released its decision in *Exxon Mobil*, holding that the *Rooker-Feldman* doctrine "has no application to a federal suit brought by a nonparty to the state suit." *Exxon Mobil*, 125 S. Ct. at 1523 (citation omitted). Thus, South Carolina is essentially asking this Court to again examine a decision rendered just months ago, but gives no good reason why it should.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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